IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3918 OF 2006

Mr. Harminder Singh Chawla ..... Applicant

Versus

1) Kavita Makhijani & Anr. ..... Respondents

2) The State of Maharashtra

Mr. M.M. Khan for the Applicant.

Mr. S.G. Bhandary i/b M/s Bhandary & Bhandary for the Respondent No. 1.

Mr. A.S. Shitole, APP for the State.

CORAM : A.S. OKA, J.

DATE : 5TH DECEMBER 2006

P.C.

1) Heard learned Advocate appearing for the Applicant. Heard learned APP for the 2nd Respondent and learned Advocate for the 1st Respondent.

2) The Applicant has been arraigned as an accused in a complaint filed by the 1st Respondent under

Section 138 of The Negotiable Instruments Act, 1881. The Applicant was convicted by the Judgment and Order dated 22nd August 2006 by the learned Metropolitan Magistrate. The Applicant was sentenced to suffer rigorous imprisonment for four months and to pay a fine of Rs.2,000/-. He was directed to pay compensation of Rs.5,00,000/- within 30 days.

3) The Applicant has preferred an appeal before the Sessions Court for challenging the order of conviction and sentence. By order dated 14th September 2006, the Appellate Court suspended the sentence on the condition that the Applicant shall deposit Rs.2,00,000/- within one month in the said Court. The Applicant was ordered to be released on bail on executing P.R. bond in the sum of Rs.15,000/- with a solvent surety in the said amount.

4) The learned Advocate for the Applicant submitted that the Applicant has a very good case on merits in the pending appeal. The learned Advocate for the Applicant has submitted that it is impossible for the applicant to deposit the amount as ordered by the Appellate Court. He submitted that in terms of order dated 10th November 2006 passed by this Court, the applicant has shown bonafides and has deposited a sum of Rs.50,000/- in the Sessions Court. He submitted that the Applicant is not in a position to pay the balance amount considering his precarious financial

condition. He submitted that the Applicant is not in a position to pay even the tuition fees of his children.

5) The learned Advocate for the 2nd Respondent supported the impugned order passed by the learned Judge and submitted that the cheque amount is of Rs.3,50,000/- and the applicant has been directed to pay a sum of Rs.2,00,000/- against the compensation of Rs.5,00,000/- awarded by the trial Court.

6) I have considered the submissions. I am informed across the bar that the Appeal is not likely to be heard atleast for one year considering the pendency of the appeals in the Sessions Court. The order impugned passed by the Sessions Court is certainly in consonance with the consistent view taken by this Court. Since the cheque amount is on the higher side, as a condition for suspending the sentence, the Appellate Court directed the Applicant to deposit of Rs.2,00,000/-. The amount fixed by the Appellate Court is a reasonable amount. Hence no interference is called for.

7) The learned Advocate for the Applicant has stated that the financial condition of the applicant is very precarious. Considering the peculiar facts of the case, sufficient time deserves to be granted to the Applicant to deposit the amount. As stated earlier, the Applicant has deposited a sum of Rs.50,000/- with

the Appellate Court.

8) Considering the peculiar facts and circumstances of the case and considering the deposit of Rs.50,000/- made by the Applicant, time fixed by the Appellate Court to deposit the amount deserves to be extended till 6th July 2007.

9) Hence, I pass following order.

(i) The impugned order dated 14th September 2006 is confirmed with the modification that the applicant is granted time till 6th July 2007 to deposit the balance amount of Rs.1,50,000/- with the Appellate Court.

(ii) This order will not operate as stay of proceeding of the appeal and if the appeal is ready, the concerned Court will be free to proceed with the hearing of the appeal.

(iii) Till 6th July 2007, the applicant shall be enlarged on temporary bail, subject to executing P.R. bond of Rs.15,000/-.

(iv) All the contentions of the parties on merits of the pending appeal are kept open.

(A.S. OKA, J.)